IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 21 2014
ARTHUR JOHNSTON
BY ______ DEPUTY

TERESA GONZALEZ **PLAINTIFF**

VERSUS **CAUSE NO.:** 1:14cv62 HSO-RHW

UNITED STATES OF AMERICA
And JOHN DOES A-Z **DEFENDANTS**

COMPLAINT

(JURY TRIAL REQUESTED)

COMES NOW Plaintiff, Teresa Gonzalez, by and through undersigned counsel, and files herewith his Complaint against the Defendant, United States of America, specifically, the United States Forestry Service, a sub-division of the United States Department of Agriculture, and John Does A-Z, and in support of said claim for relief would show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1.

The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. 1346(b)(1).

2.

The Court is the proper venue for this action pursuant to 28 U.S.C. 1402(b) as the Plaintiff resides in the Southern District of Mississippi, Southern Division.

3.

Administrative Claims have been properly and truly presented by the Plaintiff and there has not been a timely response by the USDA Forestry Service. A Copy of the claim for Ms. Gonzalez is attached as Exhibit "A".

PARTIES

4.

That the Plaintiff, Teresa Gonzalez, is an adult resident citizen of Harrison County, Mississippi residing at 13458 Addison Avenue, Gulfport, Mississippi 39503.

5.

That the Defendant, the United States of America, may be served with process pursuant to F.R.C.P. 4(I) by sending a copy of the Summons and Complaint by Certified Mail to Civil Process Clerk, United States Attorney General, Gregory K. Davis, 501 East Court Street, Suite 4-430, Jackson, Mississippi 39201, and by sending a copy of the Summons and Complaint by Certified Mail to the Attorney General of the United States in care of the Department of Justice, Room B-103, 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

6.

The Defendants, John Does A-Z, are parties to this action whose identities are unknown at this time, but when those parties' true identities are discovered, the process and all pleadings and proceedings of this action will be amended by substituting their true names and giving proper notice to those parties, pursuant to Rule 9 of the Federal Rules of Civil Procedure. These Defendants consist of other individuals or entities, who or which at any time undertook, provided, or had a duty to provide a safe premises and environment to the Plaintiff and whose negligence and other tortious conduct caused or contributed to the Plaintiff's damages and injuries.

FACTS

7.

Plaintiff would show that on or about July 28, 2012, she was present on the premises of the Defendants' property, located at or near the Bethal Bike Trials off of Highway 15 in the Desoto

National Forest. Ms Gonzalez was present on the trails for the express purpose of recreationally riding her bicycle on the designated trails for this activity. That at said time and place, the Plaintiff was lawfully and properly on the premises of the Defendant in answer to the express or implied invitation of the Defendant for the purpose of riding her bicycle on the designated trails, and as such, was an invitee of the Defendant. Plaintiff would further show that while she was present on the Defendants' premises on that date, while exercising due care and caution of her own safety, the Plaintiff sustained an injuries when she rode over a ramp which was permanently erected on the Bethal Bike Trials. The Plaintiff sustained painful and permanent personal injuries to her head, neck, and body as a whole.

8.

That your Plaintiff would show that it is the duty of the Defendant to use ordinary care and diligence to protect those invitees, including your Plaintiff, from conditions which are dangerous and which may potentially cause injury on the premises of Defendant. Plaintiff would show that the Defendant is responsible for the operation and maintenance of the Bethal Bike Trails located in the Desoto National Forest, and in particular to use ordinary care and diligence in the maintenance of the park, trails and recreation area of Defendants' premises, which its invitees constantly ride during the course of the day, and to maintain said trails and recreation area in such a manner as to be free from all defects and conditions which would render Defendant's premises dangerous and unsafe for those invitees, including your Plaintiff, or present an unreasonable risk of harm to the Plaintiff in her lawful use of the premises.

9.

Plaintiff would further show that it was the duty of the Defendant by inspection or other affirmative act, to exercise reasonable care to protect the Plaintiff from the danger of reasonably foreseeable injury from occurring from reasonably foreseeable occurrences involving the trails of said recreational area; that it is further the duty of the Defendants to exercise reasonable care to protect the Plaintiff, either by inspection or other affirmative acts, to insure that safety is maintained on its grounds and to exercise reasonable care to protect the Plaintiff from injuries resulting from negligent and unsafe conditions present on the grounds, and in particular, the dangerous ramp afixed on the biking trails, which caused a dangerous and unsafe condition on Defendants' premises.

10.

Plaintiff would further show that it was the duty of the Defendant to have sufficient personnel and equipment to properly inspect and maintain the premises in a manner and condition reasonably safe for invitees. Further, Plaintiff would show that it was the duty of the Defendant to warn the Plaintiff of the dangerous conditions posed by the unsafe ramp, and to warn Plaintiff that there was such a condition afixed on the biking trails , and that Defendant, by and through its employees, while in the course and scope of their employment, carelessly failed to (1) repair condition, or (2) failed to warn of the condition of the grounds, or (3) failed to remove the dangerous condition, which rendered the recreational biking trails dangerous and unsafe for the use of such individuals, such as the Plaintiff herein.

11.

Plaintiff would allege that the unsafe condition of the trails were known by the Defendant and the Defendant's employees, agents and servants, or in the exercise of reasonable care, should have known of the dangerous condition permanently afixed on the biking trails, and that said Defendant, employees, agents and/or servants failed to repair, remove or failed to warn of the dangerous condition prior to the injuries to the Plaintiff.

12.

Plaintiff would state that the Defendant's negligence proximately caused or proximately contributed to cause her injuries and damages. Plaintiff states that the Defendants failed to perform certain legal duties owed to your Plaintiff, including, but not limited to the follows:

a. The Defendants failed to use ordinary care to have the premises on which the Defendant operates its premises in a reasonably safe condition for use in manner consistent with the Defendants' invitation to Plaintiff as a invitee;

b. The Defendants failed to warn the Plaintiff of the condition of the trails, and failed to warn the Plaintiff of the danger posed by the ramp permanently afixed on the trails and further allowed the dangerous and unsafe condition to exist on the Defendants' premises;

c. The Defendants failed to exercise reasonable care to protect the Plaintiff by performing reasonable inspections or other affirmative acts from the danger of reasonable or foreseeable injury occurring from the reasonably foreseeable ramp afixed on the recreational bike trails, which was known or should have been known to the Defendants;

d. The Defendants failed to use reasonable care to provide a recreational area and bike trails which was free from dangerous conditions, and that the Defendants, by breach of those duties, thereby exposed Plaintiff to an unreasonable risk;

e. Other aspects to be shown at trial.

13.

Plaintiff would show that as a direct and proximate result of the negligence of the Defendant's, as previously set forth, the Plaintiff, while on the Defendant's premises, at the express or implied invitation of the Defendant, sustained injuries which were proximately caused by the aforesaid acts of negligence of the Defendant. In particular, Plaintiff, Teresa Gonzalez, has sustained the following:

a. Severe and permanent injuries to her head and neck;

b. Plaintiff would show that she has incurred medical bills in the past, and will in the future incur medical bills, including but not limited to, amounts for hospital care, doctors' care, surgical procedures, physical therapy, pain management, medicines and drugs, and other out of pocket expenses. Plaintiff reserves the right to submit the total amount of medical bills at trial.

c. Loss of wages (past and future);

d. Loss of wage earning capacity;

e. Restricted in all other physical activities in which she was involved prior to sustaining the injuries in questions;

f. Pain and suffering, mental anguish, emotional distress;

g. Loss of enjoyment of life, and

h. Physical disability, either total or partial, consisting of total and/or partial loss of certain bodily functions.

14.

Plaintiff further alleges that at all times pertinent and material hereto, the acts and omissions of the Defendants were egregious, malicious, grossly negligent, and reflected reckless disregard for the safety of the Plaintiff, and that the Defendants committed willful and malicious wrongs as alleged herein rising to the heightened level of tortious conduct requiring the assessment of punitive damages. Plaintiff is therefore entitled to punitive and exemplary damages granted as a punishment for the wrongdoing of the Defendants and as an example so that others, including the Defendants, may be deterred from the commission of similar offenses and thereby protect other residents and to award the Plaintiff for his public service in bringing the wrongdoer, Defendants herein, to account.

15.

Plaintiff would also allege the doctrine of *res ipsa loquitur* is applicable to the facts herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Honorable Court will accept this his Complaint against the Defendants, issue process to the Defendants within the time and manner as prescribed by law, and that Plaintiff would demand judgment of and from the Defendants in an amount which would exceed the jurisdictional limits of this Honorable Court, punitive damages together with all costs, prejudgment and post judgment interest.

RESPECTFULLY SUBMITTED, this the 20th day of February, 2014.

TERESA GONZALEZ, Plaintiff

BY: HOPKINS, BARVIÉ & HOPKINS, P.L.L.C.,
His Attorneys

BY: ______________________________
A. NORRIS HOPKINS, JR., MSB# 10819

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